

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Susan Illston, Judge

XIMPLEWARE CORP., a California)
corporation,)

Plaintiff,)

VS.)

NO. C 13-05160 SI

VERSATA SOFTWARE, INC., f/k/a)

TRILOGY SOFTWARE, INC., a)

Delaware corporation; TRILOGY)

DEVELOPMENT GROUP, INC., a)

California corporation;)

AMERIPRISE FINANCIAL, INC., a)

Delaware corporation; and)

AMERIPRISE FINANCIAL SERVICES,)

INC., a Delaware corporation,)

Defendants.)

San Francisco, California

Wednesday, December 4, 2013

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

COMPUTERLAW GROUP LLP

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

APPEARANCES: (CONTINUED)

For Defendants Versata Software, Inc., f/k/a Trilogy Software, Inc., & Trilogy Development Group, Inc.:

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For Defendants Ameriprise Financial, Inc., and Ameriprise Financial Services, Inc.:

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BY: GREGORY S. TAMKIN, ATTORNEY AT LAW

1 said, "There is a loss of control from the lack of our
2 copyright notice being on the copies that you distributed."

3 Counsel's admitted as much. He just says, "Well, it's
4 object code so we don't have to do it. We don't have to use a
5 copyright notice."

6 **THE COURT:** All right. So what do you say?

7 **MR. ALAVI:** Your Honor, I think Mr. Russo's argument
8 is an interesting argument but it ignores the reality of how
9 enterprise software is distributed and used by Fortune 500
10 companies, and that's who we're talking about. We're talking
11 about Fortune 500 companies that received Versata Software, as
12 well as the XimpleWare software, pursuant to a master license
13 agreement that has restrictions on their ability to distribute
14 the software outside their enterprise.

15 So the idea that a company like Ameriprise, who has a
16 license agreement with Versata that prohibits their ability to
17 distribute the software that they have received to anyone else,
18 would suddenly distribute the XimpleWare software all over the
19 world, it's not believable.

20 And there's certainly no evidence that any of Versata's
21 customers, who all have agreements with Versata that restrict
22 their ability to use and distribute the software they've
23 received, are going to go out and distribute the XimpleWare
24 object code to the rest of the world. Not a shred of evidence
25 of it and it doesn't make sense given the types of customers